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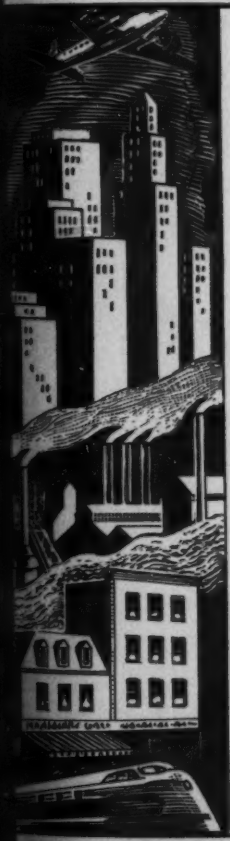
Vol. 22, No. 11 APRIL—MAY 1959 Complete No. 420



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"Step by step, state by state, corporations doing only an interstate business, find themselves subject to taxes—and the detail of collecting, reporting and paying them—which they had hoped to avoid by carrying on their business operations in interstate commerce."

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APRIL—MAY 1959

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TAXATION WITHOUT CT REPRESENTATION

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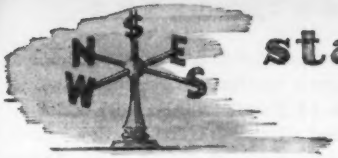

state tax trends

State Taxation of Income Exclusively Interstate

THE Supreme Court of the United States on February 24, 1959 rendered an opinion of major importance in connection with cases from the states of Georgia and Minnesota. This decision involved the right of a state to tax the net income of an unlicensed foreign corporation engaged exclusively in interstate commerce with respect to the taxing states. The court, in a 6 to 3 decision, upheld that right in *Northwestern States Portland Cement Company v. Minnesota* and *Williams v. Stockham Valves and Fittings, Inc.*, Docket Nos. 12 and 33. (79 S. Ct. 357.) (See page 214.)

In the Georgia case, which was reversed, the Georgia Supreme Court had held that a foreign corporation engaged exclusively in interstate commerce was not subject to the state corporation income tax. (*Stockham Valves & Fittings, Inc. v. Williams,* 213 Ga. 713, 101 S. E. 2d 197.) (Docket No. 33.) In the Minnesota case, the Minnesota Supreme Court had ruled that the Minnesota corporation income tax was valid as applied to an unlicensed foreign corporation engaged in interstate commerce. (*Minnesota v. Northwestern States Portland Cement Co.*, 250 Minn. 32, 84 N. W. 2d 373.) This decision was affirmed. (79 S. Ct. 383.) (Docket No. 12.)

The Supreme Court of the United States concluded "that net income from interstate operations of a foreign corporation may be subject to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing state forming sufficient nexus to support the same."

The court distinguished the Georgia and Minnesota levies before it, neither being imposed for the privilege of engaging in interstate commerce, from an income tax imposed for such a privilege. It observed that "it is beyond dispute that a State may not lay a tax on the 'privilege' of engaging in interstate commerce. *Spector Motor Service v. O'Connor,* 340 U. S. 602 (1951)."

The court emphasized that the taxes before it were "based only upon the net profits earned in the taxing State. That incidence of the tax affords a valid 'constitutional channel' which the States have utilized to 'make interstate commerce pay its way.' "

While this opinion has direct bearing on income tax administration in Georgia and Minnesota, there are eight additional states which have provisions in their income tax laws for the taxation of net income of corporations, regardless of whether received from intrastate business or interstate commerce, which has resulted in attempts to tax the income of unlicensed foreign corporations engaged only in interstate commerce with respect to these eight states. As to these states and any others which may in the future attempt to tax such corporations, the opinions in the Georgia and Minnesota cases will be of considerable interest. The additional states which have enacted legislation seeking to tax unlicensed foreign corporations receiving income exclusively from interstate commerce are Arizona, Arkansas, California, Colorado, Connecticut, Mississippi, Oregon and Pennsylvania. All of these states, except Arkan-

sas, are to be viewed as bracketing foreign commerce with interstate commerce, so as to reach income from foreign commerce also.

Louisiana may be added to the group seeking to tax income exclusively from interstate commerce. This is because of its successful attempt to tax a foreign corporation on income from interstate commerce in *Brown-Forman Distillers Corporation v. Collector of Revenue,* 101 So. 2d 70. An appeal was dismissed in this case by the United States Supreme Court on March 2, 1959. (Docket No. 142.)

North Carolina is also to be added by reason of the decision of that state's Supreme Court in *ET & WNC Transportation Company v. Currie,* 104 S. E. 2d 403, upholding an income tax upon a foreign corporation furthering interstate commerce only. This was affirmed by the United States Supreme Court on March 2, citing the Georgia and Minnesota cases. (Docket No. 524.)

domestic corporations

DELAWARE

Demand for payment for stock mailed within twenty days after date of mailing notice of recording of merger, although not received within such twenty day period, held timely.

Defendant Delaware corporation, a corporation resulting from a merger under 8 Del. C., Sec. 253, objected to the claim for an appraisal filed by the plaintiffs, on the ground that the written demand for payment was not made within the time permitted by 8 Del. C., Sec. 253(e). That section provides in part: "if any such stockholder shall within 20 days after the date of mailing of the notice [of recording of merger] object in writing to said merger and demand in writing from the parent or surviving corporation, payment for his stock, such parent or surviving corporation shall, within 30 days after the expiration of the period of 20 days, pay to him the value of his stock on the date of the recording of the Certificate of Ownership and Merger, exclusive of any element of value arising from the expectation or accomplishment of said merger." One of the plaintiffs mailed her objection and demand for payment within twenty days but it was not received by defendant within such twenty-day period.

The Chancery Court for New Castle County observed that "the statute should not be construed to involve a standard which renders the result subject to the vagaries of mail delivery. The more objective test arising from the use of the postmark would seem preferable, particularly since that is the statutory test provided for corporations." The Chancellor concluded that Sec. 253(e) requires only that the demand for payment be placed in the mail so as to bear a postmark which is within twenty days after the mailing date of the corporation's notice.

Coyne et al. v. Schenley Industries, Inc., 147 A. 2d 647. Caryl M. Curtis, Louis and Rita Freed, pro se. Aaron Finger of Richards, Layton and Finger, of Wilmington, for defendant.

Exchange of stock of purchasing corporation for assets of selling corporation, and proposed subsequent dissolution of selling corporation, held not a merger in violation of Delaware law.

This was an action by the stockholders of a corporation for a declaratory judgment to the effect that the acquisition by the corporation of all the assets of another corporation which was to be dissolved was in fact an illegal merger not approved by the required two-thirds vote of the stockholders. The acquisition plan consisted of the transfer of all the assets of the selling corporation to the acquiring corporation in return for 225,000 shares of common stock in the acquiring corporation. The selling corporation proposed to dissolve as soon as possible after completion of the transaction, and the acquiring corporation in effect undertook to carry on its business. Plaintiffs submitted that the transaction constituted a complete integration of the selling corporation into the acquiring corporation, and that the cumulative effect was such as to have resulted in a merger violative of Delaware law. Plaintiffs insisted that the mere formalism whereby the consideration for the purchase was to be paid to the selling corporation and then distributed to its stockholders on dissolution, rather than directly to the stockholders, could not alter the true character of the transaction.

The Court of Chancery, New Castle County, noted that plaintiffs were "in substance objecting to the acquisition of corporate property by means of the issuance of stock," and that they remained as stockholders of the acquiring company. It concluded that they "may not complain of a corporate purchase made in conformity with Delaware statutory authority unless such transaction is fraudulent as having been carried out for a grossly inadequate consideration or otherwise made in bad faith."

Heilbrunn v. Sun Chemical Corporation, 146 A. 2d 757. Irving Morris, of Wilmington, and Edward Lee, of New York City, for plaintiffs. Caleb S. Layton, of Richards, Layton & Finger, of Wilmington, and Manning, Hollinger & Shea, of New York City, for defendants.

PENNSYLVANIA

Reorganization agreement between two corporations, providing for taking over of assets of one by the other and dissolution of former, regarded as a merger, calling for notice to shareholders of survivor of their statutory rights of dissent and appraisal.

"We are required," said the Supreme Court of Pennsylvania, "to determine on this appeal whether, as a result of a 'Reorganization Agreement' executed by the officers of Glen Alden Corporation and List Industrial Corporation, and approved by the shareholders of the former company, the rights and remedies of a dissenting shareholder accrue to the plaintiff." The lower court had enjoined the officers and directors of the Glen Alden Company from carrying out the agreement. Although termed a "Reorganization Agreement" the result was to bring about the dissolution of the List Industries Corporation, after Glen Alden had acquired its assets and issued stock to List, which stock was to be distributed to shareholders of List. Glen Alden was to assume all of List's liabilities and the directors of both were to become directors of Glen Alden, which was to change its name to List Alden Corporation.

Plaintiff, a shareholder of Glen Alden Corporation, sought to enjoin the carrying out of the agreement. He filed his complaint subsequent to an annual meeting at which a majority of the outstanding shares voted in favor of a resolution approving the reorganization agreement. Referring to the notice of the meeting, he contended it did not reveal that the purpose of the meeting was to effect a merger or a consolidation of Glen Alden and List, that it failed to give notice to the shareholders of their right to dissent to the plan of merger or consolidation and claim fair value for their shares and that it did not contain copies of the text of certain sections of the Business Corporation Law as required.

The Supreme Court of Pennsylvania, affirming the lower court, concluded: "We hold that the combination contemplated by the reorganization agreement, although consummated by contract rather than in accordance with the statutory procedure, is a merger within the protective purview of sections 908, subd. A and 515 of the corporation law. The shareholders of Glen Alden should have been notified accordingly and advised of their statutory rights of dissent and appraisal. The failure of the corporate officers to take these steps renders the stockholder approval of the agreement at the 1958 shareholders' meeting invalid. The lower court did not err in enjoining the officers and directors of Glen Alden from carrying out this agreement."

Farris v. Glen Alden Corporation et al., 143 A. 2d 25. W. James MacIntosh of Philadelphia, Franklin B. Gelder and J. Julius Levy of Scranton, and Arthur Littleton and Morgan, Lewis & Bockius of Philadelphia, for appellants. Michael H. Sheridan and Henry Thalenfeld of Wilkes-Barre, for appellee.

foreign corporations

CALIFORNIA

Signing of crew and outfitting vessel in state for a single voyage ruled not doing business so as to uphold service of process upon owner of vessel.

The basic question before the District Court of Appeal, First District, Division 1, was whether the moving defendant, which sought to have service of process upon it quashed, was doing business for the purpose of such service where it had arranged, in California, for the signing up of a crew and the outfitting of one vessel, chartered to the named defendant. The vessel had made only rare calls to any California port.

The court concluded: "In the present case the signing of the crew and outfitting of the vessel in California for this one voyage, even though such activities involved a succession of acts, constituted but one basic single endeavor to outfit the vessel for a single voyage. This was not, standing alone, as a matter of law, the carrying out of 'repeated and successive transactions of its business' in this state."

Holtkamp v. States Marine Corp. et al., 331 P. 2d 679. Delaney, Fishgold & Freitas of San Francisco, for appellant. John F. Porter and Lillick, Geary, Wheat, Adams & Charles of San Francisco, for respondents.

COLORADO

Filing of assumed name certificate by foreign corporation held to cure statutory bar to maintenance of suit.

This was an action by a Delaware corporation, doing business in Colorado under an assumed or trade name, to collect debts allegedly due it from defendant in Colorado. Defendant raised the defense, among others, that plaintiff had failed to file a certificate to do business under an assumed or trade name in Colorado, as required by C.R.S. 1953, 141-2-1. The penalty provided by the statute for failure to file the certificate is that "such . . . corporations, so trading and doing business shall not be permitted to prosecute any suits for the collection of their debts until such affidavit shall be filed". The District Court dismissed the action, and after the filing of the required certificate, plaintiff commenced a new action in that court on the same claims. The District Court dismissed this second action on the ground that the first trial was on the merits and thus the doctrine of res judicata barred the second suit.

The Colorado Supreme Court found that the only thing decided by the trial court at the time of the dismissal of the first action was that the plaintiff was without capacity to prosecute the action by reason of its failure to file the certificate. The Supreme Court took the view that this did not "in any manner prejudice the right of the plaintiff to bring a second suit on the same claim once the defect which gave rise to the abatement of the first action has been cured."

Although the question was not presented to the trial court, the Supreme Court found it necessary to determine whether, in Colorado, a foreign corporation could resort to court action to enforce its rights if it carried on its business in any name other than that adopted in the state where it was incorporated. The court concluded that since domestic corporations have the power to do business under an assumed name, and since C.R.S. 1953, 31-10-3, provides that foreign corporations shall have the same powers as domestic corporations, any barrier to the enforcement of a contract made under an assumed name by a foreign corporation was removed. The judgment of the District Court was reversed and the cause remanded for trial upon the merits.

Admiral Corporation v. Trio Television Sales & Service, Inc., 330 P. 2d 1106. Holland & Hart, Peter H. Dominick, Jay W. Tracey, Jr., W. Joseph Shoemaker, of Denver, for plaintiff in error. Albert Latham, Jr., of Denver, for defendant in error.

IDAHO

Qualification at time of trial ruled sufficient for maintenance of suit.

One of the questions before the Supreme Court of Idaho was whether the plaintiff foreign corporation, an assignee, was required to establish its right to do business in Idaho as of the time the action was commenced. The corporation had not been qualified at the time of the commencement of the suit and did not qualify until about nineteen months later. It was in a position at the trial to present the

Secretary of State's receipt for its annual license tax and for the fee for filing a designation of agent.

Holding that "qualification at the time of trial is sufficient to entitle plaintiff to maintain the action," the Supreme Court of Idaho found that "the receipt for the annual license tax is competent evidence of the right to do business in the state and is prima facie sufficient."

Spokane Merchants' Association v. Olmstead et al., 327 P. 2d 385. Eli Rapaich and William J. Jones of Lewiston, for appellant. Daniel A. Quinlan of Lewiston, for respondent.

ILLINOIS

Foreign corporation which allegedly solicited and secured orders in Illinois and agreed to send expert on maintenance of purchased equipment held doing business so as to be subject to jurisdiction of the Illinois courts.

Plaintiff filed suit in the Circuit Court of Madison County, Illinois, against defendant Colorado corporation, for breach of warranty. Summons was served personally on an officer of defendant in Colorado. Defendant's motion to quash the service, on the ground that it had not transacted business in Illinois so as to subject it to the jurisdiction of Illinois courts, was granted, and plaintiff appealed.

The question was whether the allegations of the complaint were sufficient, if proven, to subject the defendant to jurisdiction in Illinois. Plaintiff alleged that defendant, through an agent, solicited and secured two orders from plaintiff for the purchase of defendant's vending machines, that these orders contained the agreement of the defendant to obtain the "initial location contracts" for the vending machines sold, and that the defendant agreed to send an expert in the service and maintenance of the machines. The Appellate Court of Illinois, Fourth District, stated that the complaint sufficiently alleged the necessary "minimum contact" with Illinois and one of its residents, and that the action arose out of and was directly connected with defendant's activities in the state. The ruling of the lower court granting defendant's motion was reversed.

Berelemann v. Superior Distributing Company, 151 N. E. 2d 116. Eldon M. Durr of Edwardsville, for appellant. Burroughs, Simpson & Burroughs of Edwardsville, for appellee.

LOUISIANA

Unlicensed corporation not doing business in state held to have right to maintain suit.

Plaintiff unlicensed foreign corporation sued to recover on trade acceptances executed by the named defendant. The trial court dismissed the suit upon evidence indicating merely that the plaintiff was an unlicensed foreign company. The Court of Appeal of Louisiana set aside this judgment and remanded the action, specifying that it was additionally essential that the fact be established by competent proof that the corporation was doing business within the state, which had not been done in this case.

Equitable Discount Corporation v. Dickinson, 106 So. 2d 800. Eugene J. Coen of Shreveport, for appellant. Morgan, Baker, Skeels, Middleton & Coleman of Shreveport, for appellee.

NEW BRUNSWICK

Quebec corporation not doing business in New Brunswick held entitled to maintain suit in New Brunswick.

This was an action by plaintiff Quebec corporation as assignee of a conditional sales contract which defendant had entered into as purchaser. Defendant raised, among others, the defense that plaintiff, being incorporated under the laws of another Province, had no right to maintain an action in New Brunswick.

The New Brunswick Supreme Court, Appeal Division, took the view that the plaintiff, "having been brought into existence by letters patent witnessed in the name of the Lieutenant-Governor of Quebec and issued under the Great Seal of that Province, is a company having the capacity of a natural person with the same right that a natural person, residing outside of New Brunswick, has of bringing an action within this jurisdiction. As there is no statute or law in this Province prohibiting a company so incorporated and not carrying on business here from suing in New Brunswick it is my opinion that the plaintiff has the right to maintain an action in this Province."

Aetna Factors Corporation Ltd. v. Breau,* 15 D.L.R. 2d 326. C. E. Leger, Q.C., for appellant. E. Neil McKelvey, for respondent.

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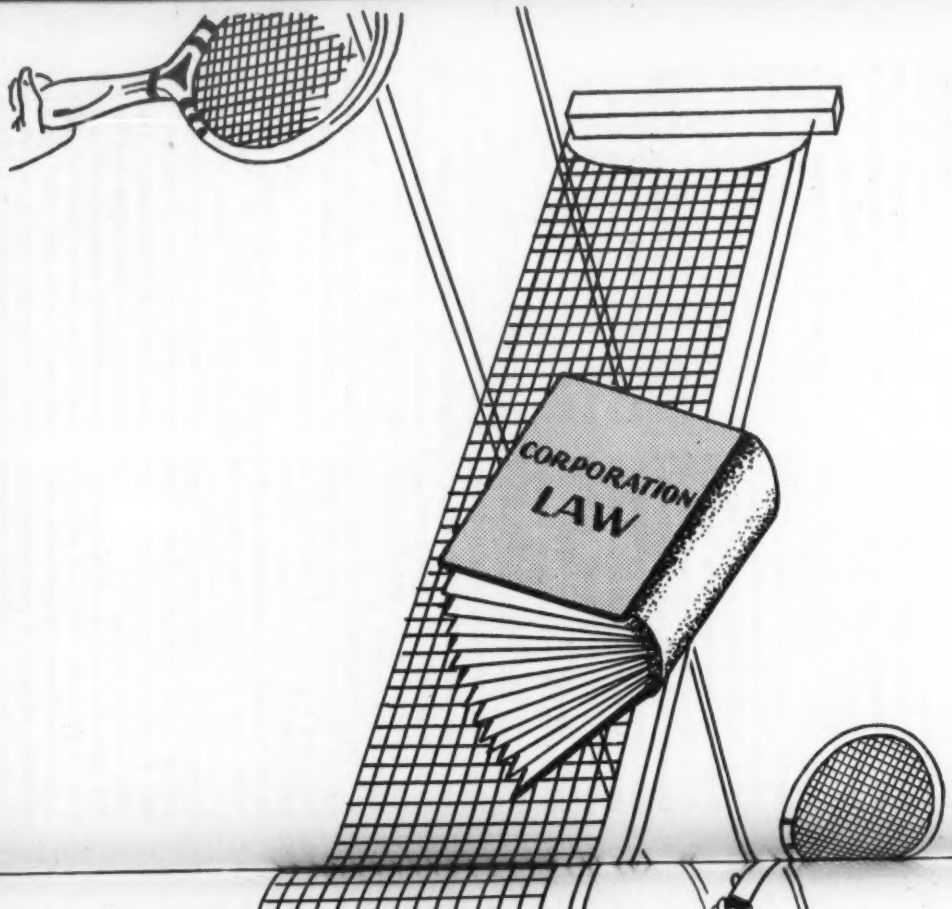
* The full text of this opinion is printed in the **CCH Dominion Companies Law Reporter**, page 1488.

NEW YORK

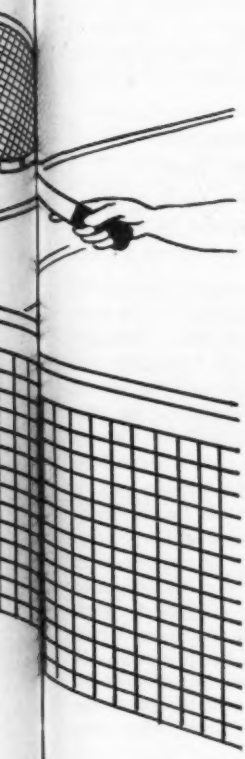
Federal statute raising jurisdictional requirement as to amount in controversy in diversity of citizenship cases to $10,000, held applicable to action begun in state court prior to, and removed to federal court after, effective date of statute.

This was a civil action for damages in the sum of $5,000 plus interest and costs, begun in a city court and removed to the federal court by the defendant. Plaintiff moved to remand the case to the court of origin on the ground, among others, that a federal court had no jurisdiction in a diversity of citizenship case for an amount in controversy less than $10,000. Public Law No. 85-554, 85th Congress (July 25, 1958) amended Section 1332 of Title 28 U.S.C.A. so as to increase the jurisdictional requirement as to amount in controversy in diversity of citizenship cases to $10,000, exclusive of interest and costs. However, Section 3 of the Act provides that "this act shall apply only in the case of actions commenced after the date of the enactment of this Act".

In the instant case the action was begun in the City Court of the City of New York prior to the effective date of the Act, but removed to the federal court after the effective date of the Act. The United States District Court, E. D. New York, concluded that Section 3 of the Act excluded from the application thereof only actions commenced in the *District* Courts prior to July 25, 1958. The court said that "in the last analysis, to find jurisdiction here would mean to hold that an


CORPORATION
LAW

INCORPORATION, ANYONE?



It seems *everyone* is interested.

Some states report hundreds more new incorporations have been effected in 1959 than in the corresponding month of 1958. One state reports an increase of more than a thousand new incorporations over the total for the same month last year.

It may be the pleasant business climate of 1959. It may be the advantages of "tax option" corporations. It may be a revival of the practice of incorporating a separate company for each state in which business is to be conducted. Whatever the reason or reasons there is no question this surge of new incorporations means more and more time-sapping detail work for more and more lawyers. There is no question, either, that CT information on incorporation costs-requirements-procedures and CT handling of the filings, recordings and publications (if required) will make the lawyer's job easier.

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action is removable from a State court which could not have been originally instituted in this Court on the day it was removed." "A much more specific indication than that appearing in Section 3 would have to be found before it could be said that Congress intended to upset the established principle that no civil action is subject to removal unless the action is one in which the federal court could have exercised original jurisdiction at the time of removal." The motion to remand was granted.

The District Court found it unnecessary, in view of this conclusion, to consider plaintiff's contention that defendant had its principal place of business in New York and that therefore there was no diversity of citizenship.

Lorraine Motors, Inc. v. Aetna Casualty & Surety Co., 166 F. Supp. 319. David M. Engelson, for plaintiff. Maurice McNamee & White, for defendant and third-party plaintiff, Robert B. White of counsel. Thomas W. Fleckenstein of Bellmore, N. Y., for third-party defendant.

Service in a New York court action on a dissolved New Jersey corporation by service on the New Jersey Secretary of State upheld, under New York statute, as made "in the same manner" as if made in New York.

Defendant, a New Jersey corporation which had been dissolved by that state for non-payment of franchise taxes, had an interest in certain realty in New York. Plaintiff, who claimed to have a mortgage on the realty, commenced a foreclosure action in the New York Supreme Court, and attempted to serve defendant by delivery of copies of the summons and complaint in New Jersey to the New Jersey Secretary of State. Plaintiff had been unable to serve defendant's only officer or director, who resided on the realty in New York. Defendant did no business in New York and had no registered agent there. Defendant's registered agent in New Jersey had died and a new agent had not been appointed. The action was removed to the United States District Court for the Southern District of New York. There defendant's motion to vacate an order appointing a receiver, primarily on the ground that defendant had not been served in accordance with New York law, was denied, and defendant appealed.

The United States Court of Appeals, Second Circuit, cited Section 235 of the New York Civil Practice Act, which provides that a defendant in any case specified in section 232 may be served "without the state in the same manner as if such service were made within the state." Concluding that the instant case fell within that section, the court said that the crucial question was whether service on the New Jersey Secretary of State was "in the same manner" as if it were made in New York. Concluding that the service was "in the same manner," the court cited section 217 of the New York General Corporation Law permitting service on the New York Secretary of State where the designated agent has died, and N. J. Rev. Stat. 14:13-14 empowering the New Jersey Secretary of State to accept service out of a foreign court. The court affirmed the judgment, holding that the District Court had acquired personal jurisdiction over the defendant.

Meyer v. Indian Hill Farm, Inc., 258 F. 2d 287. Abraham L. Wax, for defendant. Harte, Natanson & Gordon (George Natanson, of counsel), for plaintiff. Paul W. Williams, U. S. Attorney, Southern District of New York (Robert L. Tofel, Asst. U. S. Attorney, of counsel), for United States of America, Libellant.

Service on Illinois corporation sustained where its activities in New York were not isolated nor its presence there casual.

This action was instituted against defendant Illinois corporation by service on defendant's vice-president while he was attending a semi-annual 'Lamp Show' in New York. Defendant moved to vacate and set aside the service on the ground that it was not doing business in New York State and therefore was not subject to the jurisdiction of a New York court.

Although defendant claimed that it was in New York merely to show its wares at the Lamp Show, and that sales were made through independent salesmen on a commission basis, the Supreme Court, Special Term, New York County, Part I, found defendant's presence had not been casual, nor its activities isolated. The court observed, moreover, that the action was based on a contract allegedly made in New York between defendant and a New York resident. The court concluded that "the corporation was doing business in this State both at the time of the alleged contract and at the time of service. In the circumstances the court is of the view that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'."

Meyer v. Bradley Manufacturing Company, Inc., 178 N.Y.S. 2d 677. Charles Evans, for plaintiff. David W. Kahn, for defendant.

taxation

CALIFORNIA

Possessory interests in government-owned personal property held not subject to personal property tax.

Plaintiff corporations brought these actions to recover county and city ad valorem personal property taxes, asserting that the property taxed belonged to the United States and that plaintiffs had no taxable interest in it. Defendant taxing authority contended that plaintiffs had taxable possessory interests in this government-owned personal property. From judgments for the plaintiffs, defendant appealed to the California Supreme Court.

Under the terms of the various research and production contracts relating to national defense between plaintiffs and the armed services, title to all of the personal property involved was in the United States. It comprised tools and equipment used in producing goods or carrying out research for the armed forces, materials being fabricated into products to be delivered to the armed forces, and property held on a stand-by basis for use in the event of increased defense research or production. The Supreme Court observed that a title clause standing alone is not conclusive of ownership for tax purposes, but concluded here that the plaintiffs did not retain any rights in the property inconsistent with its ownership by the United States for tax purposes. Having

determined that the California legislature had not provided for the taxation of limited interests in tangible personal property, although it had the power to do so, but had provided for the taxation of such property as an entity or not at all, the court concluded that an assessment of the value of plaintiffs' limited possessory interest was invalid.

*General Dynamics Corp. v. Los Angeles County; Aerojet-General Corp. v. Los Angeles County,** 330 P. 2d 794. Robert B. Watts and John C. McDevitt; Gray, Carey, Ames & Frye, for General Dynamics. Wm. J. Donahue; Hill, Farrer & Burrill, for Aerojet-General. Laughlin E. Waters, U. S. Attorney, Charles K. Rice, Assistant U. S. Attorney General, for United States. Harold W. Kennedy, County Counsel, Alfred C. DeFlor, Deputy County Counsel, for Los Angeles County.

* The full text of this opinion is printed in the **State Tax Reporter,** California, page 13,421.

GEORGIA—MINNESOTA

The Supreme Court of the United States upholds state taxation of income of unlicensed foreign corporations engaged exclusively in interstate commerce.

In *Stockham Valves & Fittings, Inc. v. Williams,* 101 S.E. 2d 197, (The Corporation Journal, December 1957—January 1958, page 55), the Georgia Supreme Court held that a foreign corporation, engaged within the state exclusively in interstate commerce, was not subject to the state tax on the net income of corporations. In *Minnesota v. Northwestern States Portland Cement Co.,* 84 N.W. 2d 373, (The Corporation Journal, August—September, 1957, page 14), the Minnesota Supreme Court held that a state tax measured by net income on corporations whose business "consists exclusively of foreign commerce, interstate commerce, or both," applied to such a corporation engaged exclusively in interstate commerce.

Upon appeal, the Supreme Court of the United States has written an opinion in connection with these cases, in which it has reversed and remanded the Georgia litigation and has affirmed the opinion of the Minnesota Supreme Court. The Supreme Court of the United States concluded "that net income from the interstate operations of a foreign corporation may be subject to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing state forming sufficient nexus to support the same."

*Northwestern States Portland Cement Company v. State of Minnesota; Williams v. Stockham Valves & Fittings, Inc.,** Supreme Court of the United States, February 24, 1959. (Docket Nos. 12 and 33.) (79 S. Ct. 357.)

* The full text of this opinion is printed in the **CCH U. S. Supreme Court Bulletin,** page 577.

OHIO—WISCONSIN

Property taxes imposed on imported materials stored adjacent to importers' plants upheld where materials were "put to the use for which they were imported."

In *Youngstown Sheet & Tube Co. v. Bowers,* 140 N.E. 2d 313, (The Corporation Journal, February—March 1958, page 72), the Ohio Supreme Court held that the Federal constitutional prohibition against the taxation of imports did not apply to imported ores after commingling with other ores, and after portions of the ore were removed for use in manufacturing. In *United States Plywood Corporation v. City of Algoma,* 87 N.W. 2d 481, the Supreme Court of Wisconsin upheld a tax imposed by the City of Algoma, Wisconsin, upon one-half of the value of imported lumber and veneers which were stored next to the company's plants in Algoma, concluding that such amount was necessary to the current operational needs of the company.

The United States Supreme Court, in an opinion disposing of both cases, sustained the right of Ohio and Algoma, Wisconsin, to impose these taxes.

The Federal Constitution provides that "No State shall, without the Consent of the Congress, lay any Impost or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws . . ." The Court pointed out that there must be some point in time, however, when the protection afforded imports by this provision gives way to the right of the state to tax the property within its borders. This point in time is reached, the court held, when the materials have been "put to the use for which they were imported." In the *Youngstown* case the ores had arrived at their destination and had been placed in yards at the plant. The daily ore needs of the plant were conveyed from these yards to bins holding one or two days' supply, from which the ore was fed into furnaces. The court stated that these stipulated facts inescapably established that Youngstown had so acted upon the imported ores, by using them for the purpose for which they were imported, that they had lost their distinctive character as imports and all tax immunity as such. In the *United States Plywood* case the imported lumber was stacked in a storage yard adjacent to the plant to allow air-drying. From time to time so much as was about to be put into veneered products was placed in kilns where drying was completed and the lumber readied for use. The imported veneers were kept in their original bundles in piles for use as needed in the day-to-day operation of the plant. As in the *Youngstown* case, the court held that these materials had entered the manufacturing process and so had lost their distinctive character as imports and all tax immunity as such. The Court specifically pointed out that, whatever the significance of retaining in the "original package" goods imported for sale, goods imported for use in manufacturing are not exempt from taxation while in the "original package" if they have been put to the use for which they were imported.

*Youngstown Sheet & Tube Company v. Bowers; United States Plywood Corporation v. City of Algoma**, Supreme Court of the United States, February 24, 1959. (Docket Nos. 9 & 44.) (79 S. Ct. 383.) Carlton S. Dargusch, Sr., Columbus, Ohio, for appellant Youngstown Sheet & Tube Company. Roger C. Minahan, Milwaukee, Wisconsin, for petitioner United States Plywood Corporation.

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* The full text of this opinion is printed in the **CCH U. S. Supreme Court Bulletin**, page 481.

state legislation

Massachusetts — House Bill No. 2399, Laws of 1959, signed by the Governor on February 6, imposes withholding at the source as to payments of wages made on or after February 15, 1959. Returns and payments are due quarterly, the first due on or before April 30, 1959 for the quarterly period beginning January 1. Employers are required to deduct and withhold a tax, upon all wages which are subject to Massachusetts income tax, in accordance with tables prepared by the Commissioner of Corporations and Taxation.

Discussions on Corporation Law

The Fiduciary Duty of Management—The Concept in the Courts, by David C. Bayne. 35 University of Detroit Law Journal, June, 1958, pp. 561-594.

New Threat in State Business Taxation, by Paul Studenski and Gerald J. Glasser. 36 Harvard Business Review, November-December, 1958, pp. 77-91.

The Small Business Corporation, by Willard D. Horwich. Taxes—The Tax Magazine, January, 1959, page 20.

Let's Go Slow With Tax Option Corporations, by Harold M. Hoffman. Taxes—The Tax Magazine, January, 1959, page 21.

Business Associations, by Bert S. Prunty, Jr. New York University Law Review, December, 1958, pp. 1133-1139.

Important Virginia Requirements
July 1, 1959 Deadline

Virginia corporations which were in existence on January 1, 1957, and which have not already done so, are required by Sec. 13.1-128 of the Stock Corporation Act (Ch. 428 of 1956) to establish a registered office and appoint a registered agent by filing a Statement, in duplicate, with the State Corporation Commission. *Virginia corporations which have not done so before July 1, 1959, will automatically cease to exist on that date.* Corporations complying between January 1, 1959 and July 1, 1959, file the Statement with the Commission, accompanied by a fee of $1 payable to the Commission, a fee of $1 payable to the Clerk of the Court, and an additional fee of $100 payable to the Commission, which is imposed for late filing.

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

GEORGIA. Docket No. 33. *Stockham Valves & Fittings, Inc. v. Williams,* 101 S. E. 2d 197. (The Corporation Journal, December 1957—January 1958, page 55.) Corporation income tax—interstate commerce. **Petition for writ of certiorari filed, February 3, 1958. Certiorari granted, March 17, 1958.** (78 S. Ct. 670.) **Argued, October 15, 1958. Judgment reversed and case remanded, February 24, 1959.** (79 S. Ct. 357.) (See pages 203 and 214.)

LOUISIANA. Docket No. 142. *Brown-Forman Distillers Corporation v. Collector of Revenue,* 101 So. 2d 70. (The Corporation Journal, August—September, 1958, page 134.) Income tax—income received by corporation engaged only in interstate commerce. **Appeal filed June 30, 1958. March 2, 1959:** *Per curiam:* "Motion to dismiss granted and appeal dismissed. Treating the papers whereon the appeal was taken as a petition for certiorari, certiorari denied."

MINNESOTA. Docket No. 12. *Minnesota v. Northwestern States Portland Cement Co.,* 84 N. W. 2d 373. (The Corporation Journal, August—September, 1957, page 14.) Income tax—income received by corporation engaged only in interstate commerce. **Appeal filed, November 12, 1957. Probable jurisdiction noted, January 6, 1958. Argued, October 14, 1958. Judgment affirmed, February 24, 1959.** (79 S. Ct. 357.) (See pages 203 and 214.)

NORTH CAROLINA. Docket No. 524. *ET & WNC Transportation Company v. Currie,* 104 S. E. 2d 403. (The Corporation Journal, October—November, 1958, page 156.) Income tax—interstate commerce—common carrier corporation. **Appeal filed, November 18, 1958. March 2, 1959:** *"Per curiam:* Judgment affirmed. Northwestern States Portland Cement Co. v. Minnesota, No. 12, Oct. Term, 1958, decided February 24, 1959, and Williams v. Stockham Valves & Fittings, Inc., No. 33, Oct. Term, 1958, decided February 24, 1959." *(See pages 203 and 214.)* Justices Frankfurter, Whittaker and Stewart dissented for the reasons stated in the dissenting opinions in these cases.

OHIO. Docket No. 9. *Youngstown Sheet & Tube Co. v. Bowers,* 166 O. S. 122, 140 N. E. 2d 313. (The Corporation Journal, February—March, 1958, page 72.) Property taxes — ores imported from foreign countries. **Appeal filed, October 30, 1957. Probable jurisdiction noted, January 6, 1958. Motion of City of Algoma to strike brief, as amici curiae, of Bruce Bromley, et al. denied, October 20, 1958. Argued, November 12, 1958. Judgment affirmed, February 24, 1959.** (79 S. Ct. 383.) (See page 215.)

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* Data compiled from **CCH U. S. Supreme Court Bulletin.**

regulations and rulings

Arkansas — Irrespective of the number of domestic corporations listed on an agent's change of address certificate, only one fee of $5 should be charged for the filing of the certificate. There is no provision for filing change of address certificates of foreign corporations, but there is a provision for charging a fee of $2.50 for filing the appointment or substituted appointment of a resident agent. (Opinion of the Attorney General, State Tax Reporter, Arkansas, ¶ 4-004.)

Florida — Where the sole function of a Florida branch of a foreign corporation is performing work pursuant to contracts negotiated, approved and executed in another state, and where the corporation's headquarters in another state exercises complete control over the Florida plant, the situs of the accounts receivable of the Florida plant has remained in another state and they are therefore not subject to the Florida intangibles tax. (Opinion of the Attorney General, State Tax Reporter, Florida, ¶ 200-237.)

In the determination of whether or not a foreign corporation is required to qualify to do business in Florida in order to avoid criminal sanctions for transacting business without authority, the question of whether or not the actions of the corporation in Florida involve intrastate commerce or interstate commerce is a factual one. (Opinion of the Attorney General, State Tax Reporter, Florida, ¶ 200-248.)

Georgia — The Georgia sales tax does not apply to tangible personal property produced or manufactured in the state which is placed on a common carrier by a seller for shipment into another state and sold to customers in that state. However, the sales tax exemption does not extend to customers from another state who take possession in Georgia of goods which they purchased from a Georgia seller. (Letter of Advice of Attorney General, State Tax Reporter, Georgia ¶ 200-144.)

North Carolina — If real estate is purchased from a tax-exempt organization after January 1 and prior to July 1, the property becomes taxable on July 1 of the year in which it was acquired. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 200-477.)

Oklahoma — Any dividends paid by a close corporation should be treated as ordinary income. If a close corporation that pays a dividend received five percent or more of its gross income from sources within the state, this distribution will be treated as a nontaxable dividend, but will not be deductible from the corporation's taxable income. If a shareholder has paid the tax on a portion of the corporation's income that is assigned to corporate surplus, it will not increase the basis of his stock. (Letter, Oklahoma Tax Commission, State Tax Reporter, Oklahoma, ¶ 200-093.)

Pennsylvania — Companies receiving official receipts of the Department of Revenue for voluntary payments of escheatable funds into the State Treasury without escheat are relieved of all liability to the legal owners of the funds. The Commonwealth replaces the companies as custodian of the funds and therefore assumes the liabilities. (Opinion of the Attorney General, State Tax Reporter, Pennsylvania, ¶ 33-601.80.)

some important matters

For April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Franchise Tax due April 1; delinquent after April 30.

Arizona — Income Tax and Annual Report due on or before April 15.

Arkansas — Income Tax Return due on or before May 15.

California — Quarterly Retail Sales Tax due on or before April 30.

Colorado — Income Tax Return due on or before April 15.
Annual Report and Franchise Tax due May 1.

Connecticut — Quarterly Retail Sales Tax due on or before April 30.

Delaware — Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of salaries, dividends, interest or other income to residents of Delaware during 1958.

Withholding at source Returns due April 30.—Domestic and Foreign Corporations paying compensation to Delaware employees.

District of Columbia — Franchise (Income) Tax Return due April 15.

Annual Reports of companies incorporated, reincorporated or qualified under the Business Corporation Act of 1954, due April 15.

Georgia — Income Tax Return due April 15.

Idaho — Income Tax Return due on or before April 15.

Indiana — Quarterly Gross Income Tax due on or before April 30.

Iowa — Quarterly Retail Sales Tax due on or before April 30.
Income Tax Return due on or before April 30.

Kansas — Income Tax Return due April 15.

Kentucky — Income Tax and Corporation License Tax due on or before April 15.

Louisiana — Income Tax Return due on or before May 15.—Franchise Tax Report and Tax due on or before May 15.

Maryland — Annual Report (Personal Property Return) and Franchise Tax Report and Tax due on or before April 15.—Domestic Corporations.

Income Tax Return due April 15.

Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.

Massachusetts — Returns of Information at the source due on or before June 1.—Domestic and Foreign Corporations.

Michigan — Annual Report and Franchise Tax due on or before May 15.

Missouri — Quarterly Retail Sales Tax due on or before April 15.

Income Tax Returns due on or before April 15.

Montana — Annual Statement due in April and May.—Foreign Corporations.

New Jersey — Franchise Tax and Income Tax Report and payments due on or before April 15.

New Mexico — Income Tax Return due on or before April 15.

Franchise Tax due May 1.

New York — Annual Franchise (Income) Tax Return (Form 3 CT—Article 9A Tax Law) and one-half of tax due May 15—Business Corporations, Holding Companies and Investment Trusts.

North Carolina — Intangible Tax and Information Returns due April 15.

North Dakota — Income Tax Return due on or before April 15.

Quarterly Retail Sales Tax due on or before April 30.

Oregon — Excise (Income) Tax Return due on or before April 15.

Pennsylvania — Income Tax Return due on or before April 15.

Capital Stock Tax Report and Tax and Corporate Loans Report and Tax due on or before April 15.—Domestic Corporations.

Franchise Tax Report and Tax, Corporation Loans Tax Report and Excise Tax Report due on or before April 15.—Foreign Corporations.

Rhode Island — Business Corporation Tax due on or before May 1.

South Dakota — Quarterly Retail Sales Tax due on or before April 15.

Texas — Franchise Tax due May 1.

Utah — Income (Franchise) Tax Return due on or before April 15.

Quarterly Retail Sales Tax due on or before April 30.

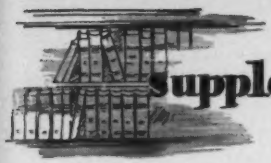
Vermont — Income (Franchise) Tax Return due on or before May 15.

Virginia — Income Tax Return due on or before April 15.

Income Tax due June 1.

West Virginia — License Tax Report due in April.—Foreign Corporations.

Quarterly Business and Occupation (Gross Sales) Tax due April 30.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

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Corporate Confusion. A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

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